RECENT DECISIONS

ADMIRALTY—JURISDICTION OVER HYDRO-AEROPLANE.—The defendant's hydro-aeroplane broke from its moorings in navigable waters. The plaintiff, guardian of the plane, waded in and was struck by the propeller. He seeks to recover under the state compensation law. *Held,* for the defendant. The plane is a vessel and the case comes within the exclusive jurisdiction of admiralty. *Reinhardt* v. *Newport Flying Service Corp.* (1921) 232 N. Y. 115.

The test of whether a construction is a vessel under admiralty jurisdiction is its capability of navigation and the *"animus navigandi."* Hughes, *Admiralty* (2d ed. 1920) 14. A construction not navigated, and not intended for navigation, is not a vessel, although capable of navigation and floating upon navigable waters. *Cope* v. *Vallette Dry Dock Co.* (1887) 119 U. S. 625, 7 Sup. Ct. 336 (dry dock). A craft once a vessel but no longer intended for navigation, is not within admiralty jurisdiction although still capable of use as a vessel. *The Hendrick Hudson* (1869) 11 Fed. Cases, No. 6355 (hulk used as floating hotel). See *Olsen* v. *Birch & Co.* (1901) 133 Cal. 479, 483, 65 Pac. 1032. But a craft designed for navigation is a vessel even if not used solely for that purpose. *Bowers Hydraulic Dredging Co.* v. *Federal Contracting Co.* (D. C. 1906) 148 Fed. 290; *aff'd* (C. C. A. 1907) 153 Fed. 870 (dredge-boat). By statute a vessel is any craft used or capable of being used for transportation on water. (1886) 14 Stat. 178; (1870) 16 Stat. 170, U. S. Comp. Stat. (1916) § 3. The desire of admiralty courts being to secure a uniform admiralty law, they interpret "vessel" very broadly. See *Cope* v. *Vallette Dry Dock Co., supra,* 629; *Charles Barnes Co.* v. *One Dredge Boat* (D. C. 1909) 169 Fed. 895, 896, 897. Mere movement out of waters under admiralty jurisdiction does not prevent admiralty from regaining its jurisdiction when the vessel returns into such waters. See *Waring* v. *Clarke* (U. S. 1847) 5 How. 441, 463, 464; *Peyroux* v. *Howard & Varion* (U. S. 1833) 7 Pet. 324, 342-44. A recent case is to be distinguished by the fact that an aeroplane, not a hydro-aeroplane, was involved. *The Crawford Bros. No. 2* (D. C. 1914) 215 Fed. 269. Since neither change of place nor of character prevents a craft's being subject to admiralty jurisdiction while its character is that of a vessel and while it is upon navigable waters, and since a hydro-aeroplane comes within the statutory and judicial definitions of a vessel, one of its purposes being water navigation, it seems sound to hold that a hydro-aeroplane is within the jurisdiction of admiralty, at least while on water.

BROKERS—SPECIAL CONTRACT OF EMPLOYMENT—COMMISSIONS.—The plaintiff, a broker, who contracted to sell property for the defendant under an agreement that his commission was not payable unless title passed, secured a contract for its sale. Before title passed, the defendant agreed to a cancellation because the purchaser stated he had insufficient funds to perform his agreement. In an action by the broker to secure the balance of his commission, *held,* for the defendant. *Weiner* v. *Infeld* (Sup. Ct. App. T. 1921) 190 N. Y. Supp. 82.

Under the ordinary contract of employment, a broker is entitled to his commission upon securing a purchaser ready and able to buy. *Holden* v. *Starks* (1893) 159 Mass. 503, 34 N. E. 1069. A failure to consummate the contract of sale, if due to the principal's default, is immaterial. *Hecht* v. *Hall* (1895) 62 Ill. App. 100. And, when a contract is made between the vendor and vendee and the passing of title is not a condition, the broker has earned his commission

even though the purchaser defaults. *Alt* v. *Doscher* (1905) 102 App. Div. 344, 92 N. Y. Supp. 439. The ordinary obligation of a broker may of course be changed by a special agreement. See *Parker* v. *Walker* (1888) 86 Tenn. 566, 568-69, 8 S. W. 391. Then recovery may be had only upon compliance with the terms of such contract. *Barber* v. *Hildebrand* (1894) 42 Neb. 400, 60 N. W. 594. Thus, when the principal's satisfaction with the proposed vendee is a condition precedent to the payment of the commission, the broker cannot recover unless his principal is satisfied. *Walker* v. *Tirrell* (1869) 101 Mass. 257. If, however, the principal releases the buyer from his contract before the happening of the condition precedent and without the latter's default, the broker is entitled to his commission. *Littell & Sons* v. *Schwartz* (N. Y. 1920) 192 App. Div. 353, 182 N. Y. Supp. 638. But if, as in the instant case, the principal cancels the contract because of any fault of the purchaser, the broker cannot recover. *Seymour* v. *St. Luke's Hospital* (1898) 28 App. Div. 119, 50 N. Y. Supp. 989; *contra, Pinkerton* v. *Hudson* (1908) 87 Ark. 506, 113 S. W. 35.

CONSTITUTIONAL LAW—FORFEITURE OF PERSONAL PROPERTY—TRIAL BY JURY.—The defendant's automobile was declared forfeit by the trial court under a statute which provided that vehicles used in the illegal transportation of liquor should be forfeited without a jury trial. On appeal, *held,* this statutory denial of a trial by jury was unconstitutional. *Keeter* v. *State* (Okla. 1921) 198 Pac. 866.

The right of trial by jury secured by the state constitutions is the right to such a trial as existed at common law when these constitutions were adopted. *Flint River Steamboat Company* v. *Foster* (1848) 5 Ga. 194; *Byers and Davis* v. Commonwealth (1862) 42 Pa. St. 89. The abatement of public nuisances without judicial process, being well known to the common law, is now a constitutional exercise of the police power. *Coe* v. *Schultz* (N. Y. 1866) 2 Abb. Prac. (N. S.) 193; *Mullen & Co.* v. *Mosely* (1907) 13 Idaho 457, 90 Pac. 986; *Harvey* v. *De Woody* (1856) 18 Ark. 252; *Lawton* v. *Steele* (1894) 152 U. S. 133, 14 Sup. Ct. 499. *A fortiori* if a hearing is granted, it does not follow that a jury trial must be allowed. *Kirkland* v. *State* (1904) 72 Ark. 171, 78 S. W. 770. Moreover, these are cases within the jurisdiction of equity and there are no jury trials in equity. *Luria* v. *United States* (1913) 231 U. S. 9, 34 Sup. Ct. 10; *Mugler* v. *Kansas* (1887) 123 U. S. 623, 88 Sup. Ct. 273; *Littleton* v. *Fritz* (1885) 65 Iowa 488, 22 N. W. 641. The right of summary abatement at common law and under the police power is restricted, however, to property which is usually used solely for illegal purposes. See *Lawton* v. *Steele, supra.* It does not include the seizure of property ordinarily used for lawful purposes, where at least a hearing is necessary. *McConnell* v. *McKillip* (1904) 71 Neb. 712, 99 N. W. 505; *City of Chicago* v. *Stock Yards Co.* (1896) 164 Ill. 224, 45 N. E. 430. Nor does it apply where an issue of fact as to the unlawful use may be joined. *Greene* v. *James* (1854) 2 Curt. C. C. 187. And if the scope of a statute permits unreasonable seizures, as by making no provision for judicial condemnation, it is void. *Lowry* v. *Rainwater* (1879) 70 Mo. 152. And if the property seized under a statute with no provision for a jury trial can be used for legal purposes, as for example a vessel, the statute is void as not within the police power of the State. *Colon* v. *Lisk* (1897) 153 N. Y. 188, 47 N. E. 302. The instant case is, therefore, sound.

CONSTITUTIONAL LAW—REFERENDUM—REVIEW OF LEGISLATIVE DISCRETION.—The legislature, under a constitutional clause providing for a referendum on all laws except those necessary for the immediate preservation of the public peace, health, and safety, passed an enactment which it declared to be of the type not subject to the referendum. In an action to compel a referendum, *held,* three judges dis-